IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 258 OF 2017

Cine Properties and Finance Pvt. Ltd. … Petitioner

V/s

State of Maharashtra & Anr. … Respondents

Mr. M.A. Vaid i/b Vaid Asso. for the Petitioner.

Mr. H. B. Takke, AGP for the Respondent No.1.

Ms. Sheetal Mane, for Respondent No.2/MCGM.

CORAM : K. K. TATED, J.
DATED : 07/03/2017

P.C.:

. Heard learned Counsel for the parties.

2 By this petition under Articles 226 & 227 of the Constitution of India the Petitioner challenges the notice dated 15.12.2016 issued by the Assistant Assessor and Collector/D-Ward, Municipal Corporation, Gr. Mumbai calling upon the petitioner to pay total amount of Rs.45,54,431/- towards outstanding taxes in respect of property bearing SAC No. DX-05-0223-006-0000 situated at Padamsi Road, Dream Land Theatre.

3 It was the case of the petitioner that though they paid excess amount to the respondent No.2 corporation, they issued the impugned notice dated 15.12.2016.

4 The learned counsel for the petitioner submits that from time and again, they requested respondent No.2 corporation providing them statement of account how much amount paid by them. As respondent No.2 failed and neglected to provide all these information and issued impugned notice dated 15.12.2016, they filed the present petition challenging the said notice.

5 During the pendency of the present petition, the Respondent No.2 corporation filed sur-rejoinder dated 01.03.2017 duly affirmed by Shri.N.G. Bhagwat, Asst. Assessor and Collector, having office at Assistant Commissioner, D-Ward, 4th Floor, Nana Chowk, Grant Road, Mumbai – 400007 stating that as per their calculation they have to refund the sum of Rs.25,18,507/- to the petitioner. Paragraph 11 and 12 of the said rejoinder reads thus:

> *"11. I say that as far as objection raised in paragraph 13 to …. of the rejoinder-the complaint against ratable value under No. DCR/424/94-95 disposed off on 25.05.2011 however, to the amended bills of property taxes were issued on 03.07.2016. Here the R.V. amended module is developed and deployed in the year 2014-2015.*
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> *Further in this particular case, as the record of payment made by the tax payer was not available wit this office, the accounts department gathered the information through various sources such as Ward Inspector's bill book, etc. it takes time. Finally the bills are amended and the refund amounting to Rs. 25,18,507/- is due to the tax payer. The same will be adjusted by obtaining application and other relevant documents (such as all original receipt and/or certificate of payment alongwith self attested zerox copy of pan card, cancelled cheque etc. as per procedure) from the tax payer with due sanction from competent authority.*
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> *12. I say that as per statement attached herewith at Exhibit-I, the Petitioner has to pay Rs.20,35,925/- as on 31.03.2017,*

after adjustment of Rs.25,18,507/- as explained as above to fulfill the demand of property taxes amounting Rs.45,54,432/- as on 31.03.2017."

6 The Respondent No.2 corporation placed on record the statement of account at Exh.I on page 113 to the said rejoinder. The statement of account shows that since 1995 excess amount was lying with the corporation in the account of petitioner. Therefore, it is crystal clear that though the petitioner paid excess amount of Rs.25,18,507/- as on today, the Respondent No.2 corporation issued notice dated 15.12.2016 calling upon the petitioner to pay total amount of Rs.45,24,431/- towards the taxes.

7 Considering these facts, the said notice is required to be set aside with directions to the Respondent No.2 Corporation to refund the sum of Rs.25,18,507/- to the petitioner.

8 Hence, following order is passed:

a) Notice dated 15.12.2016 issued by the Assistant Assessor and Collector/D-Ward, Municipal Corporation, Gr. Mumbai for recovery of outstanding taxes of Rs.45,54,431/- in respect of property bearing SAC No. DX-05-0223-006-0000 situated at Padamsi Road, Dream Land Theatre, is set aside.

b) The Respondent No.2/Corporation is directed to refund the sum of Rs.25,18,507/- to the Petitioner within two weeks from today.

c) If amount is not refunded within stipulated time as stated hereinabove, respondent No.2 Corporation have to pay interest @ 8% per annum from the date of excess amount paid by the petitioner.

d) Writ Petition stands disposed of accordingly.

e) Parties to act on authenticated copies of this order.

(K.K.TATED, J.)